

FILED
ASHEVILLE, N.C.
NOV - 5 2014
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

AIX SPECIALTY INSURANCE COMPANY,

Plaintiff,

Case No: 1:13-CV-242-MR-DLH

vs.

BIRD BRAIN, INC., WAL-MART STORES
EAST, LP, SANDRA PRESSLEY,
DEAN PRESSLEY and
SUSIE W. GIBSON, a/k/a
VIVIAN Y. GIBSON,

Defendants.

CONSENT JUDGMENT

Plaintiff AIX Specialty Insurance Company (“AIX”) and defendant Wal-Mart Stores East, LP (“Wal-Mart”), through counsel, and defendant Bird Brain, Inc. (“Bird Brain”), through its former Chief Executive Officer, hereby stipulate, consent and agree as follows:

1. The AIX policy of insurance (Policy No. IPZ-CL-0020107-0) issued to Bird Brain for the policy period December 6, 2011 to December 6, 2012 is hereby reformed to conform with AIX’s and Bird Brain’s mutual intent at the time the policy was issued, that it provides no insurance coverage for any claims or lawsuits arising out of Bird Brain’s pourable fuel gel firepot products, including pourable fuel gel and firepots that burned pourable fuel gel.

2. The AIX policy of insurance (Policy No. IPZ-CL-0020107-0) issued to Bird Brain for the policy period December 6, 2011 to December 6, 2012 is hereby rescinded and declared void *ab initio*.

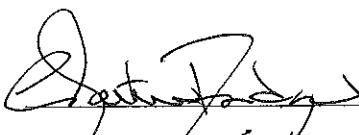
3. The AIX policy of insurance (Policy No. IPZ-CL-0020107-0) issued to Bird Brain for the policy period December 6, 2011 to December 6, 2012 provides no coverage to any person or entity in connection with the underlying action, captioned: *Sandra Pressley and Dean Pressley v. Bird Brain, Inc. and Wal-Mart Stores East, L.P. and Wal-Mart Stores East, L.P. v. Susie W. Gibson* (Case No. 1:13-cv-60-MR-DLH) (the “underlying action”).

4. Bird Brain hereby waives its right to reimbursement of the policy premium and AIX hereby dismisses with prejudice Count IV of its Complaint and waives its right to seek reimbursement from Bird Brain of defense costs incurred in connection with the underlying action.

5. Wal-Mart hereby dismisses with prejudice Count III of its counterclaim against AIX.

6. This Consent Judgment resolves the last remaining claim and constitutes a final order.

IT IS SO ORDERED



Martin Reidinger
United States Magistrate Judge
District

Stipulated as to form and content:

TEAGUE, CAMPBELL, DENNIS &
GORRHAM, LLP

/s/ William A. Bulfer

William A. Bulfer NCSB #31424
22 South Pack Square, Ste. 800
Asheville, NC 28801
Phone: (828) 254-4515
wbulfer@teaguecampbell.com
Counsel for Plaintiff

COLLINS EINHORN FARRELL, P.C.

/s/ Timothy F. Casey

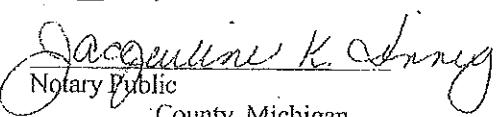
Timothy F. Casey (admitted *pro hac vice*)
4000 Town Center, Ste. 909
Southfield, MI 48075
Phone: (248) 355-4141
timothy.casey@ceslawyers.com
Counsel for Plaintiff

SPILMAN THOMAS & BATTLE, PLLC

Bryan G. Scott, NCSB #32920
110 Oakwood Drive, Ste. 500
Winston-Salem, NC 27103
Phone: (336) 725-4710
bscott@spilmanlaw.com
Counsel for Wal-Mart Stores East, LP


Courtney King
Sole Shareholder, Bird Brain, Inc.

Subscribed and sworn to before me
this 17th day of October 2014.


Notary Public
County, Michigan.
My Commission Expires:

JACQUELINE K. TINNEY
Notary Public, Wayne County, Michigan
My Commission Expires July 17, 2019
Acting in Washtenaw County, MI

Stipulated as to form and content:

TEAGUE, CAMPBELL, DENNIS &
GORRHAM, LLP

/s/ William A. Bulfer

William A. Bulfer NCSB #31424
22 South Pack Square, Ste. 800
Asheville, NC 28801
Phone: (828) 254-4515
wbulfer@teaguecampbell.com
Counsel for Plaintiff

COLLINS EINHORN FARRELL, P.C.

/s/ Timothy F. Casey

Timothy F. Casey (admitted *pro hac vice*)
4000 Town Center, Ste. 909
Southfield, MI 48075
Phone: (248) 355-4141
timothy.casey@ceflawyers.com
Counsel for Plaintiff

SPILMAN THOMAS & BATTLE, PLLC

/s/ Bryan G. Scott (with consent)

Bryan G. Scott, NCSB #32920
110 Oakwood Drive, Ste. 500
Winston-Salem, NC 27103
Phone: (336) 725-4710
bscott@spilmanlaw.com
Counsel for Wal-Mart Stores East, LP

Courtney King
Sole Shareholder, Bird Brain, Inc.

Subscribed and sworn to before me
this ____th day of October 2014.

Notary Public

County, Michigan.
My Commission Expires: